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December 19, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Report of Oral *Ex Parte* Communications
ET Docket No. 00-221
Reallocation of the 216-217 MHz Band**

Dear Ms. Salas:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to report that on December 19, 2001, representing the **Hearing Industries Association** ("HIA"), I had a face-face-meeting concerning the above-captioned proceeding with Monica Desai, Legal Advisor in the **Office of Commissioner Martin**, and a telephone conversation with Peter Tenhula, Senior Legal Advisor to **Chairman Powell**. The subject matter of these conversations was the treatment of the 216-217 MHz band as proposed in ET Docket No. 00-21.

I made the following points:

1. Additional or new operations in bands adjacent to 216-217 MHz, such as 217-220 MHz, pose a relatively small threat to assistive listening devices (ALDs) operating in the 216-217 MHz band, unless power levels are very high.
2. The indefinite grandfathering of existing systems operating in the 216-217 MHz is not likely to pose a serious threat to ALDs, as long as there is no significant expansion of those operations.
3. As a matter of general principle, it is desirable to have the Low Power Radio Service ("LPRS"), including ALDs, be afforded primary status. However, whether other operations are primary or secondary is of less significance, because of the difficulty of identifying and eliminating

interference from even secondary sources. First, users of ALDs are mobile and need freedom to travel anywhere at any time. Their whereabouts are not recorded in a database, so secondary users have no way to identify and avoid ALDs. Also, in contrast to operations like data links, which can retransmit bursts of data if the initial transmission receives interference, humans listening to sound have only one opportunity to hear the sound, so an incidence of interference cannot be cured by a repeat transmission. In addition, many ALD users are children, who not only cannot identify interference but also do not always even report interference to their teachers and parents. Thus interference to them represents a forever-lost opportunity to hear and learn that cannot be recouped. Therefore, the Commission should not rely on primary vs. secondary status to protect ALDs.

4. It makes little difference whether new or expanded operations are government or non-government. Interference potential depends on signal strength and location, not the identity of the operator.

5. Making a distinction between urban and rural areas in allowing operations other than LPRS in the 216-217 MHz band may not be useful, because hard-of-hearing people live in communities of all sizes. Interference to ALDs is not a statistical matter, where the probability is less in a less densely populated area, because the issue arises with each individual ALD user. If one classroom or one child using an ALD suffers interference, the reliability of the ALD is called into question, which impairs confidence in these very valuable devices and reduces the number of people willing to invest in purchasing them and reduces the number of people benefitting from this important technology. In any case, if any distinction is made, the top 30 markets is far too small a number to be protected; at least 100, if not 200, should get extra protection.

6. Whatever operations may be permitted in the 216-217 MHz band in addition to LPRS, the Commission should be extremely careful to provide only for the continuation of present uses with their present level of density and not to create a window for the development of a new industry by creative entrepreneurs. There is always someone looking for an opportunity to exploit new spectrum. If whatever systems are permitted become useful as consumer hardware, or even as professional equipment that is commonly deployed (whether legally or illegally), there could be irreparable damage to the hard-of-hearing population, damage which must be avoided at all costs. An example is the use of wireless microphones on vacant VHF television channels. Sections 74.801 and 74.831 of the Rules carefully restrict the use of these microphones to motion picture and television program producers, radio and television broadcasters and networks, and MMDS licensees; and a license is required. However, these microphones can be found on stages almost anywhere -- in schools, entertainment facilities, etc. -- and they are used without licensing. There is no effective control in practice over their deployment. The hard-of-hearing

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community will feel seriously betrayed if any rules are adopted that permit a similar outcome in the 216-217 MHz band.

Respectfully submitted,

/s/ Peter Tannenwald

Peter Tannenwald
Counsel for the Hearing
Industries Association

cc: Peter A. Tenhula, Esq.
Monica S. Desai, Esq.
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